Supreme Court, U. S.
FILED
SEP 26 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1977

No. 77-355

ELDAD W. BROPHY, Husband,
Petitioner

v.

STATE OF NEW HAMPSHIRE
GRAPER & SWANSON,
Professional Association and
as Individuals
ANN BROPHY, Wife

BRIEF IN OPPOSITION TO CERTIORARI

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit and the order and opinion of the United States District Court for the District of Vermont are printed as Appendices A, B & C to the Petition for Writ of Certiorari.

JURISDICTION

Petitioner has met the time requirements of 28 U.S.C. §2101(c) and has adequately invoked 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. First Amendment to the United States Constitution

2. Eleventh Amendment to the United States Constitution

3. Fourteenth Amendment to the United States Constitution

4. 28 U.S.C. §1391(a)

5. 28 U.S.C. §1391(b)

6. New Hampshire RSA Chapter 458

QUESTIONS PRESENTED

1. Was Petitioner's Complaint properly dismissed for lack of personal jurisdiction over the State of New Hampshire?

2. Was Petitioner's Complaint properly dismissed because venue does not rest in the District of Vermont?

3. Should Petitioner's Complaint have been dismissed for failure to state a claim upon which relief can be granted?

STATEMENT OF THE CASE

On October 19, 1976 the Petitioner, Eldad Brophy, filed a complaint in the United States District Court for the District of Vermont, seeking to have the

Court declare New Hampshire divorce laws unconstitutional, declare his divorce null and void, and order reconciliation between himself and his former wife. He also asked for damages against the State of New Hampshire in the amount of $10,000,000 and against Graper and Swanson, Professional Association, and Glen E. Graper and Dale L. Swanson, individually in the amount of $2,000,000.

Petitioner's complaint against the State of New Hampshire alleges that the authorization for divorce in New Hampshire RSA Chapter 458 violates his constitutional rights under the First and Fourteenth Amendments and other statutory and civil rights which are not specified.

Petitioner alleges that he is a "resident pro tem" of the State of Vermont. He does not allege that he is a resident of that state. The respondents Ann Brophy, Glen E. Graper and Dale L. Swanson are all New Hampshire residents. Graper and Swanson, Professional Association, is a corporation organized under the laws of the State of New Hampshire.

All of the respondents filed timely motions to dismiss for lack of jurisdiction, improper venue, and failure to state a claim upon which relief could be granted. Chief Justice James S. Holden granted the dismissal on February 2, 1977 on the grounds of lack of jurisdiction and improper venue. On June 7, 1977, the United States Court of Appeals for the Second Circuit summarily affirmed the District

Court's order. On September 6, 1977 Petitioner filed his Petition for a Writ of Certiorari with the Supreme Court of the United States.

ARGUMENTS OPPOSING CERTIORARI

It is well established that review on writ of certiorari is a matter of judicial discretion and that the Court's discretion will only be exercised where there are special and important reasons therefor. Rule 19 of the Rules of the United States Supreme Court. There are no important reasons for granting certiorari in this case. As far as respondent State of New Hampshire can determine, the decision in this case with respect to the questions of jurisdiction and venue are entirely consistent with decisions of other courts

of appeals and of this Court.

There are no important questions of federal law which have not been, but should be, settled by this Court. Petitioner's freedom of religion is not even remotely in jeopardy here. The State of New Hampshire has done nothing either to establish a religion or to restrict Petitioner's practice of religion. By enacting divorce laws, it has merely defined a procedure by which those of its citizens who so desire may dissolve marriages.

Petitioner's Fourteenth Amendment claims are equally without merit. He has alleged no facts which even remotely relate to either the privileges and immunities clause or the due process clause of the Fourteenth Amendment.

With respect to jurisdictional deficiencies, the question of the Eleventh Amendment limitation on the grant of jurisdiction to federal courts has already been decided and need not be reconsidered. Edelman v. Jordan, 415 U.S. 651 (1974), reh. den. 416 U.S. 1000; Ford Motor Co. v. Department of Treasury of the State of Indiana, 323 U.S. 459 (1945), Ex Parte Young, 209 U.S. 123 (1908). The venue requirements set forth in 28 U.S.C. §1391(a) and (b) are patently unambiguous and present no important question of law which this Court must decide. The fact that venue not based solely on diversity of citizenship rests in the district where all defendants reside or in which the claim arose is well

settled and need not be considered by this Court. Alternatively, venue predicated sòlely on diversity cannot rest in a district where none of the parties reside. Luckett v. Delpark, Inc., 270 U.S. 496 (1926).

It is interesting to note that Petitioner does not contest the venue and jurisdictional deficiencies but merely states that they are not "practical" and "real" to this case. Respondent knows of no such standard for rejecting clearly applicable and well established principles of law.

In summary there is no need for this Court to exercise its power of supervision over the courts below. Petitioner's claim is patently frivolous, and the Court should deny certiorari.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

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September 23, 1977